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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re MARVIN D., a Person Coming Under the Juvenile Court Law.	B234940 (Los Angeles County Super. Ct. No. FJ47065)
THE PEOPLE, Plaintiff and Respondent, v. MARVIN D., Defendant and Appellant.	

APPEAL from a judgment of the Superior Court of Los Angeles County, Robert J. Totten, Juvenile Court Referee. Affirmed as modified.

Arielle Bases, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Michael R. Johnsen and William H. Shin, Deputy Attorneys General, for Plaintiff and Respondent.

Marvin D. appeals from the juvenile court's order declaring him a ward of the court and placing him in a camp-community program after the court sustained a petition alleging he had possessed a concealed dirk or dagger in violation of former Penal Code section 12020, subdivision (a)(4).[1] Marvin contends there was insufficient evidence he knew he possessed a dirk or dagger capable of ready use as a stabbing weapon. We modify the disposition order to strike the requirement that Marvin submit a DNA sample and otherwise affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Los Angeles Police Officer Shawn Graber approached Marvin, then 17 years old, and five other young men in the late afternoon of June 23, 2011 because the youths were blocking the sidewalk, forcing pedestrians to walk around them. As he neared the group, Graber observed the handle of a screwdriver protruding about two inches from Marvin's right front pocket. Graber asked Marvin for the screwdriver; Marvin handed it to him. Graber then noticed the tool had a pointed tip, permitting it to be used as a weapon. Graber arrested Marvin for possession of a concealed dirk or dagger. At the time of this incident Marvin was absent without leave from a prior placement at Phoenix House, and there was an outstanding warrant for his arrest.

The People filed a petition pursuant to Welfare and Institutions Code section 602 alleging Marvin had possessed a concealed dirk or dagger in violation of former section 12020, subdivision (a)(4). Marvin denied the allegation.

At the jurisdiction hearing Marvin testified he had been fixing his skateboard with the screwdriver at a friend's house. The two young men then left so Marvin could get a haircut. Marvin was waiting on the street to be let into the barbershop when he was approached by Officer Garber. Marvin explained he had forgotten to leave the screwdriver with his skateboard at his friend's house.

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[1] As part of a reorganization of this portion of the Penal Code, effective January 1, 2012 former section 12020, subdivision (a)(4), was repealed and recodified without substantive change as section 21310. (See Stats. 2010, ch. 711, § 6.)

Statutory references are to the Penal Code unless otherwise indicated.

Several conflicting descriptions of the screwdriver were given at the hearing. Marvin maintained, although the screwdriver tip was not straight, it was not sharpened to a point when he had it. Officer Graber testified the tool had been sharpened to a point. After examining the screwdriver, the court observed the device looked as though it may have been sharpened, "but either way it's still a device that is pointed" and it seemed "the only purpose for it is to stab," rejecting the assertion it could be used to fix a skateboard.[2]

The court sustained the petition and declared the offense a misdemeanor. Marvin was declared a ward of the court and ordered to a camp-community placement program for a period of six months with 114 days of predisposition credit.[3] The court also ordered Marvin to perform 130 hours of community service and to provide a DNA sample (§ 296, subd. (a)(1)).

DISCUSSION

1. *Standard of Review*

The same standard governs review of the sufficiency of evidence in juvenile cases as in adult criminal cases: "[W]e review the whole record to determine whether *any* rational trier of fact could have found the essential elements of the crime or special circumstances beyond a reasonable doubt. [Citation.] The record must disclose substantial evidence to support the verdict—i.e., evidence that is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] In applying this test, we review the evidence in the light most favorable to the prosecution and presume in support of the judgment the existence of every fact the jury could reasonably have deduced from the evidence. [Citation.] 'Conflicts and even testimony [that] is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a

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[2] The court acknowledged it had "difficulty seeing it [(the alteration of the screwdriver as)] being intentional. It looks like it could have been just broken."

[3] The court calculated the maximum term of physical confinement as one year two months, apparently based on Marvin's earlier juvenile adjudications.

determination depends. [Citation.] We resolve neither credibility issues nor evidentiary conflicts; we look for substantial evidence. [Citation.]' [Citation.] A reversal for insufficient evidence 'is unwarranted unless it appears "that upon no hypothesis whatever is there sufficient substantial evidence to support"' the jury's verdict." (*People v. Zamudio* (2008) 43 Cal.4th 327, 357; see *In re Matthew A.* (2008) 165 Cal.App.4th 537, 540.)

2. *Governing Law*

Former section 12020, subdivision (a)(4), (now section 21310), prohibits any person from carrying upon his or her person a concealed dirk or dagger.[4] "A 'dirk' or 'dagger' means a knife or other instrument with or without a handguard that is capable of ready use as a stabbing weapon that may inflict great bodily injury or death." (§ 16470.)[5] To establish a substantive violation, the People must prove the defendant "knowingly and intentionally" carried the concealed instrument and knew the instrument was capable of being used "as a stabbing weapon." (*People v. Rubalcava* (2000) 23 Cal.4th 322, 332 (*Rubalcava*).)

Carrying a concealed dirk or dagger is a general intent crime. (*Rubalcava*, *supra*, 23 Cal.4th at p. 328.) An actual intent to use the instrument as a weapon is not an element of the offense. (*Id*. at pp. 333-334.) Nonetheless, recognizing the statute could criminalize "traditionally lawful conduct," the *Rubalcava* Court held "a defendant must still have the requisite *guilty mind*: that is, the defendant must knowingly and

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[4] Case law defines a "concealed" dirk or dagger as one that is "substantially concealed." (See *People v. Wharton* (1992) 5 Cal.App.4th 72, 75 [protrusion of only two inches of blade supported jury finding of "substantial concealment" required by statute]; *People v. Fuentes* (1976) 64 Cal.App.3d 953, 955 ["mere fact that some portion of the handle may have been visible makes it no less a concealed weapon"]; see generally CALCRIM No. 2501 [defining elements of crime to include "[i]t was substantially concealed on the defendant's person"].)

[5] As part of the reorganization of this portion of the Penal Code, former section 12020, subdivision (c)(24), which defined "dirk or dagger" at the time Marvin was arrested, was repealed and recodified without substantive change as section 16470, effective January 1, 2012. (See Stats. 2010, ch. 711, § 6.)

intentionally carry concealed upon his or her person an instrument 'that is capable of ready use as a stabbing weapon.' [Citation.] A defendant who does not know that he is carrying the weapon or that the concealed instrument may be used as a stabbing weapon is therefore not guilty of violating [former] section 12020." (*Id*. at p. 332.)

3. *Substantial Evidence Supports the Juvenile Court's Finding That Marvin Violated Former Section 12020, Subdivision* (*a*)(*4*)

Marvin contends the juvenile court's finding he violated former section 12020, subdivision (a)(4), is not supported by substantial evidence because the People failed to prove he knew the screwdriver was capable of being used as a stabbing weapon. Although the evidence on this point is far from overwhelming, when viewed in the light most favorable to the findings of the juvenile court, as we must, it is sufficient to uphold the court's order sustaining the petition.

As discussed, Marvin asserted the tip of the screwdriver had been broken, resulting in its sharp point. But Officer Garber testified it appeared to him to have been sharpened. After hearing the evidence and examining the tool itself, the court concluded the instrument may have been deliberately sharpened, but in any event could be used as a stabbing weapon. Of equal import, the court rejected Marvin's claim the altered screwdriver could be used to fix a skateboard: "I think he did have a device that has been modified so it seems the only purpose for it is to stab." Given these findings, which are reasonably based on the evidence, it was also reasonable for the court to conclude Marvin in fact knew the screwdriver could be used as a stabbing weapon. (See *In re David V.* (2010) 48 Cal.4th 23, 28 [Supreme Court has long recognized that former § 12020 was enacted "not only 'to outlaw the classic instruments of violence and their homemade equivalents,' but also 'to outlaw possession of the sometimes-useful object when the attendant circumstances, including the time, place, destination of the possessor, the alteration of the object from standard form, and other relevant facts indicated that the possessor would use the object for a dangerous, not harmless purpose'"]; see also CALCRIM 2501 [when deciding whether defendant knew the object could be used as a

stabbing weapon, jury should consider all surrounding circumstances, including any alteration of the object from its standard form].)

Marvin's additional contention former section 12020, subdivision (a)(4), criminalizes innocent conduct and impermissibly allows arbitrary and discriminatory enforcement was specifically rejected in *Rubalcava, supra*, 23 Cal.4th 322. The Court examined the legislative history of the amendments to the definition of "dirk or dagger" in former section 12020, subdivision (c)(24), and explained, "[T]he Legislature recognized that the new definition may criminalize the 'innocent' carrying of legal instruments such as steak knives, scissors and metal knitting needles, but concluded 'there is no need to carry such items concealed in public.'" (*Rubalcava*, at p. 330.) After finding the statute was neither unconstitutionally vague nor overbroad, the Court expressed concern it may criminalize seemingly innocent conduct. Nevertheless, the Court emphasized "'[t]he role of the judiciary is not to rewrite legislation to satisfy the court's, rather than the Legislature's, sense of balance and order.' [Citation.] We must therefore leave it to the Legislature to reconsider the wisdom of its statutory enactments." (*Id*. at p. 333.)

4. *The Juvenile Court Erred in Ordering a DNA Sample*

Section 296, subdivision (a)(1), requires "[a]ny person, including any juvenile, who is convicted of . . . any felony offense . . . or any juvenile who is adjudicated under Section 602 of the Welfare and Institutions Code for committing any felony offense" to submit biological samples for law enforcement identification analysis. Carrying a concealed dirk or dagger, the offense here, may be either a misdemeanor or a felony. Pursuant to Welfare and Institutions Code section 702 the juvenile court determined the offense to be a misdemeanor. Accordingly, as Marvin argues and the People acknowledge, the court was not authorized to order Marvin to provide a DNA sample. That portion of the disposition order must be stricken. (See *In re Ricky H*. (1981) 30 Cal.3d 176, 191 [unauthorized sentence or dispositional order properly corrected on appeal]; *People v. Scott* (1994) 9 Cal.4th 331, 354.)

DISPOSITION

The portion of the disposition order requiring submission of a DNA sample is stricken. In all other respects the juvenile court's order is affirmed.

PERLUSS, P. J.

We concur:

ZELON, J.

JACKSON, J.